

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("**Agreement**") dated this 26th day of September, 2019, is by and between Educational Media Foundation, a California non-profit, religious corporation ("**Seller**"), and Virginia Tech Foundation, Inc., a Virginia non-stock corporation ("**Buyer**").

### RECITALS

**WHEREAS**, Seller owns or holds certain assets described in Section 1.1 below (the "**Station Assets**"), including real and personal property, tangible and intangible, together with licenses, and other authorizations issued by the Federal Communications Commission ("**FCC**"), used exclusively in the operation of radio station WNVU(FM), located in Henrico County, Virginia and licensed in Charles City, Virginia (FCC Facility ID No. 82970) (the "**Station**"); and

**WHEREAS**, to the fullest extent permitted by law, Seller desires to sell, assign, and transfer to Buyer, the Station Assets owned or held by Seller; and

**WHEREAS**, to the fullest extent permitted by law, Buyer desires to acquire the Station Assets, all pursuant to the terms described herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: PURCHASE OF ASSETS

**1.1 Station Assets.** Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title, and interest of Seller in and to the following assets and properties of Seller, real and personal, tangible and intangible, that are used or held for use in the operation of the Station, as follows:

(a) all licenses, permits, and other authorizations issued to Seller by or pending with the FCC with respect to the Station (the "**FCC Licenses**") and listed on **Schedule 1.1(a)**, including any renewals or modifications thereof between the date hereof and Closing;

(b) all of the real and personal property, tangible and intangible, listed on **Schedule 1.1(b)** (the "**Property**"), together with all buildings, structures, and improvements thereon, including any right, title, and interest of Seller in and to adjacent streets, roads, alley access easements, and rights-of-way; all fixtures, equipment, and machinery located on, attached to, or used in connection with the buildings, structures, and/or other improvements situated thereon, if any; such other rights, interests, and assets as may be specified in this Agreement to be sold, transferred, assigned, or conveyed by Seller to Buyer; all of Seller's right, title, and interest in and to the Station's call letters; and used at the Station's broadcast tower site located at 2450 Inman Avenue, Henrico, Virginia 24501 ("**Transmitter Site**" or

**“Premises”**) or otherwise relating to the Station’s transmission facilities (**“Transmission Facilities”**);

(c) all of Seller’s rights in and to all the files, documents, records, books of account (or copies thereof), and including, but not limited to copies of operational manuals for tower lighting or lighting controls, transmitter, exciter, rotary converter, and other equipment etc., and transferrable computer software relating exclusively to the Station Assets being conveyed, including the Station’s online public files and warranties relating to the Property, but excluding files, documents, records, and books of account relating to any Excluded Assets (defined below);

(d) all towers and antennas located at the Transmitter Site, together with any equipment and accessories thereon or associated with the operation thereof;

(e) all contracts related to the Transmitter Site and to the operation of the Station; and

(f) any other tangible and intangible assets as may be specified in this Agreement to be sold, transferred, assigned, or conveyed by Seller to Buyer.

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title, and interest therein (the **“Excluded Assets”**)

(a) all cash and cash equivalents of Seller, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts, and all such similar accounts or investments;

(b) certain of Seller’s equipment and other tangible personal property used in the transmission operations of the Station, as identified on **Schedule 1.2(b)** hereto;

(c) all of Seller’s corporate and trade names unrelated to the operation of the Station, charter documents, and books and records relating to the organization, existence or ownership of Seller, duplicate copies of the records of the Station, and any records not relating to the Station Assets;

(d) all contracts of insurance, coverages, and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies unless Seller has assigned all of its interest in such insurance or payment for loss or damage to the Assets to be conveyed;

(e) all pension, profit sharing plans and trusts and the assets thereof, and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller;

(f) the Station’s accounts receivable, donations, and any other rights to payment of cash consideration for goods or services sold or provided prior to the Closing

(defined below) or otherwise arising during or attributable to any period prior to the Closing (the "*Accounts Receivable*");

(g) any non-transferable computer software and any other non-transferable computer licenses that are not related solely to the operation of the Station Assets;

(h) all rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to Closing; and

(i) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.8.

**1.3 Transfer.** The Station Assets shall be transferred to Buyer free and clear from all liens, claims, debts, security interests, mortgages, deeds of trusts, and other encumbrances of every kind and nature, except (i) the Assumed Obligations (defined below), (ii) liens for taxes that are not due and payable or are being contested in good faith by appropriate proceedings, and (iii) with respect to real property, such other easements, rights of way, zoning, building and use restrictions and other exceptions of record that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station or the use of the Station Assets, in each circumstance as currently utilized by Seller (collectively, "*Permitted Liens*"). Title shall be good, marketable, and insurable, without exception, at regular rates by a title insurance company of the Buyer's choice, subject, however to those permits, covenants, easements, conditions, restrictions, of record, regulations and laws, lease agreements, if any, as of the date Seller executes this Agreement constituting constructive notice in the chain of title to the Premises, which have not expired by a time limitation contained therein or otherwise become ineffective and that do not, in Buyer's sole opinion, materially adversely affect the use and enjoyment of the Premises by Buyer. Without affecting the foregoing requirements, Buyer may elect not to obtain title insurance.

If Seller is unable to deliver acceptable title as aforesaid at Closing because of any title defect, and Buyer is unwilling to waive such defect, Buyer may either (i) request Seller to correct the defect if same can be done within a reasonable time not to exceed forty-five (45) days from the date of the Seller's receipt of notice of the defect, or (ii) immediately terminate this Agreement and cause the Deposit to be returned to the Buyer. If Seller is unable or unwilling or fails to timely remedy the defect, Buyer may immediately terminate this Agreement upon written notice to Seller and the Deposit shall be returned to Buyer immediately and no party shall have any further liability hereunder.

**1.4 Assumption of Obligations.** At Closing (defined below), Buyer shall assume the obligations of Seller arising or attributable to, any period of time on or after the Closing Date under the Station Contracts and any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.7 (collectively, the "*Assumed Obligations*"). Except for the Assumed Obligations, Buyer shall not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller, including the obligations of Seller under (i) the Excluded Contracts and (ii) obligations related to the Station Contracts, arising or attributable to, any period of time prior to the Closing (the "*Retained Obligations*").

**1.5 Purchase Price.** In consideration for the sale of the Station Assets and Property to Buyer, at Closing, Buyer shall pay to Seller, by wire transfer, the sum of Two Million One Hundred Fifty Thousand Dollars (\$2,150,000) ("**Purchase Price**"), delivered to the Settlement Agent (hereinafter defined) at Closing (hereinafter defined) and disbursed to Seller upon recordation of the Deed and all other Closing Documents effectuating the sale. The Purchase Price shall include (i) the Deposit (defined below), and (ii) the rest of the Purchase Price (Two Million Forty Two Thousand Five Hundred Dollars (\$2,042,500), the "**Closing Payment**," to be delivered as provided in Section 8.2(a) below). The Closing Payment may be reduced by Seller's portion of fees owed to the Settlement Agent under Section 11.1 below.

**1.6 Deposit.** Within three (3) business days after the full execution of this Agreement, Buyer shall deliver a deposit in the amount of five percent (5%) of the Purchase Price (One Hundred Seven Thousand Five Hundred Dollars (\$107,500), the "**Deposit**") to and held by Fidelity National Title Insurance Company, the title insurance company designated by Buyer to act as settlement agent ("**Settlement Agent**") and deposited into the Settlement Agent's escrow account. At Closing, the Settlement Agent shall deliver the Deposit to the Seller. If this Agreement is terminated pursuant to Section 5.4, 5.5, 10.1(b), or 10.1(d), the Settlement Agent shall return the Deposit to the Buyer. If this Agreement is terminated for any other reason, the Deposit and any interest accrued thereon shall be disbursed to Seller, unless the parties agree otherwise in writing. Any failure by Buyer to make the Deposit on the date on which it is due constitutes a material default as to which the Cure Period under Section 10.2 does not apply, entitling Seller to immediately terminate this Agreement.

**1.7 Prorations and Adjustments.** All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles ("**GAAP**") as of 12:01 a.m. on the day of Closing. Such prorations shall include without limitation all ad valorem, real estate and other property taxes (except transfer taxes as provided by Section 11.1), music and other licensee fees, utility expenses, rent and other amounts under Station Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Station's deposits and prepaid expenses. Sales commissions related to the sale of advertisements broadcast on the Station prior to Closing shall be the responsibility of Seller, and sales commissions, if any, related to the sale of advertisements broadcast on the Station after the Closing shall be the responsibility of Buyer. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing.

**1.8 Allocation.** On or before the Closing, Seller and Buyer will each allocate the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"). Each of Buyer and Seller shall file a tax return reflecting this allocation as and when required under the Code.

**1.9 Closing.** The consummation of the sale and purchase of the Property provided for in this Agreement (the "**Closing**") shall take place on or before the tenth (10th) business day after the date the FCC Consent (defined below) becomes a Final Order, or, if Buyer agrees to consummate without a Final Order, on such earlier date as Buyer and Seller may mutually agree, in either case assuming the satisfaction or waiver of the other conditions set forth in Articles 5.5, 6 and 7 below. The date on which the Closing is to occur is referred to herein as the "**Closing**"

**Date.** For purposes of this Agreement, a "**Final Order**" means a decision by the FCC or a court of competent jurisdiction, as modified or supplemented upon reconsideration or review by the FCC or a court of competent jurisdiction, that is no longer subject to reconsideration or review by the FCC or a court of competent jurisdiction because the time periods for seeking such reconsideration or review under applicable law and government regulation have expired without any such request for reconsideration or review having been filed.

**1.10 Plans, Engineering, Title Examination, and Records.** Seller agrees to provide, at no cost, within ten (10) business days of a reasonable request from Buyer, any of the following written materials possessed by Seller:

- (a) any letters, ordinances, resolutions, or other materials in writing disclosing the current zoning classification and subdivision of the Property and the uses thereunder;
- (b) any letters or written materials concerning the availability and capacity of the utilities which service or will serve the Property;
- (c) any reports or other documents concerning the soil conditions of the property as determined by soil tests or otherwise;
- (d) any surveys, including boundary, tree, and topographical, of the Property;
- (e) any marketing, environmental, geotechnical, and engineering studies and reports relative to the Property;
- (f) any current leases or pending leases for any portion of the Property; and
- (g) all other reports, studies, site plans, analyses, and other writing information and materials relative to the Property.
- (h) all records of Seller concerning the revenues and expenses relating to the Property and the improvements located thereon.

**1.11 Assignment of Seller Rights and Warranties.** Seller agrees to assign to Buyer all rights in and to and any warranties applicable to the Station Assets to the extent assignable.

**1.12 Governmental Consents.**

(a) Within five (5) business days of the date of the full execution of this Agreement, Buyer and Seller shall file an application with the FCC (the "**FCC Application**") requesting FCC consent to assign the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the "**FCC Consent**." Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Each party shall diligently take, or cooperate in the taking of, all steps necessary and appropriate to expedite the preparation of the FCC Application and prosecute it to a favorable conclusion at the earliest practicable time. Each party will promptly provide

the other party with a copy of any and every pleading, order, or other material communication (including e-mails) received or sent which relates to the FCC Application (other than communications between or among a party and such party's lawyers and advisors). The parties will use commercially reasonable efforts and otherwise cooperate with each other in responding to any information requested by the FCC related to the FCC Application, in preparing any amendment to this Agreement requested by the FCC which does not adversely affect such party in a material manner, and in defending against any petition, informal objection, application for review, complaint, or other objection which may be filed against the FCC Application; *provided, however*, that neither party shall be required to appear at any trial-type hearing or to participate in a judicial appeal. Buyer and Seller shall oppose any petitions to deny or other objection filed with respect to the FCC Application to the extent such petition or objection relates to such party.

## ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

**2.1 Organization.** Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is qualified to do business in the Commonwealth of Virginia in which the Station Assets are located. Seller has good, marketable, and insurable fee simple title to the Property, free and clear of all liens, encumbrances, and other exceptions to title, except for Permitted Liens and those matters of record. Seller has the requisite power and authority to execute, deliver, and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the "*Seller Ancillary Agreements*") and to consummate the transactions contemplated hereby. Between the date of full execution of this Agreement and Closing, Seller shall not subject the Property to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Property, without the written consent of the Buyer, which shall not be unreasonably withheld.

**2.2 Authorization.** The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties thereto will be, a legal, valid, and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**2.3 No Conflicts.** Except as set forth on *Schedule 2.3* and except for the FCC Consent, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which



Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

**2.4 FCC Licenses.** Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the licenses, permits, and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded, or terminated and have not expired. There is not pending or, to Seller's knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind, or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "*Communications Act*"), and the FCC's published rules and policies (the "*FCC Rules*"), and the Station is transmitting at no less than ninety percent (90%) of its authorized power. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been filed. All such reports and filings are accurate and complete in all material respects. An application to the FCC for renewal of the FCC Licenses (the "*FCC Renewal Application*") is currently pending. Seller anticipates that this renewal application will be processed and granted in the ordinary course, but Seller makes no representation concerning the disposition of that application.

**2.5 Taxes.** Seller has, in respect of the Station Assets, filed all foreign, federal, state, county and local property, and other tax returns and reports which are required to have been filed by it under applicable law, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

**2.6 Property.** *Schedule 1.1(b)* contains a description of the real property and a list of the personal property, tangible and intangible, included in the Station Assets. Seller has good and marketable title to the Property free and clear of Liens and other encumbrances. Except as may be set forth on *Schedule 1.1(b)*, the personal property items are in operating condition and are free from material defect and not in need of material repair, ordinary wear and tear excepted. Each tower (or similar pole, building, rooftop or other infrastructure) from which any Station broadcasts is (a) obstruction marked; (b) lighted; and (c) properly registered with the FCC to the extent required by, and in accordance with, the Communications Act and FCC Rules and the rules and regulations of the FAA.

**2.7 Insurance.** Seller maintains insurance policies or other arrangements with respect to the Station Assets consistent with its practices for other of its stations, and will maintain such policies or arrangements until the Closing.

**2.8 Compliance with Law.** Except as set forth on *Schedule 2.8*, to Seller's knowledge, (i) Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC Rules and FAA rules and regulations applicable to the operation of the Station Assets, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station Assets, and (ii) there are no governmental claims or investigations pending or threatened against Seller in respect of the Station except those affecting the industry generally.

**2.9 Litigation.** Except as set forth on *Schedule 2.9*, there are no actions, suits, or proceedings now pending, or to Seller's knowledge threatened, against Seller in connection with this Agreement, or that question the legality or propriety of the transactions contemplated by this Agreement, or that could materially adversely affect the ability of Seller to perform its obligations hereunder. Furthermore, Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

**2.10 No Undisclosed Liabilities.** There are no liabilities or obligations of Seller with respect to the Station Assets that will be binding upon Buyer after the Closing other than the Assumed Obligations and other than pursuant to the prorations under Section 1.7.

**2.11 Other Agreements.** To the best of Seller's knowledge, the execution and delivery of this Agreement, the completion of the transaction contemplated hereby, and the fulfillment of the terms hereof, will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Seller is a party or by which it or the Property described herein is bound, or any judgment, decree, order, or award of any court, governmental body, or arbitrator, or any law, rule, or regulation applicable to Seller.

**2.12 Station Assets.** The Station Assets together with the Excluded Assets include all assets that are owned or held by Seller and used or held for use exclusively in the operation of the Station in all material respects as currently operated.

**2.13 Leases or Other Agreements for Use, Occupancy, or Possession.** Except for the use of the Property by Radio Richmond, LLC under a License Agreement dated November 9, 2015, there are no leases or other agreements for the use, occupancy, or possession of the Property or any portion thereof. Regarding the License Agreement referenced herein, Seller agrees to assign the Agreement to Buyer at Closing, and will comply with Licensee notice and documentation requirements contained in the License Agreement, provide Buyer with copies of the notice and supporting documentation, and execute an Assignment of License Agreement to assign the Agreement to Buyer at Closing.

**2.14 Condemnation and Eminent Domain.** There are no condemnation or eminent domain proceedings, pending, or to the best of Seller's knowledge, contemplated against the Property or any part thereof, and Seller has received no notice of the desire of any public authority or other entity to take or use the Property or any part thereof.

**2.15 Hazardous or Contaminated Substances.** To the best of Seller's knowledge, neither the Property nor any part thereof is being used to unlawfully treat, deposit, store, dispose of, release, or place any hazardous or contaminated substances, as defined by Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 41 U.S.C.A. §9601 (14).

**2.16 Endangered or Protected Species.** Seller is not aware of any endangered or federally or state protected species of animal, fish, or fowl being located on or near the Property



by which such habitation would preclude Buyer or an assignee of the Buyer from utilizing the Property for any commercial use deemed suitable by Buyer in its sole discretion.

**2.17 Zoning.** To the best of Seller's knowledge, the Property is properly zoned for Purchaser's intended purpose of conducting radio broadcasts. Between the date of full execution of this Agreement and the Closing Date, Seller shall not file any application for any change of the present zoning classification of the Property.

**2.18 Restrictions, Assessments, Fees, Charges.** To the best of Seller's knowledge, the Property is not subject to any unpaid use or occupancy restrictions, special taxes and assessments or utility fees or charges whether existing of record or arising by operation of law, unrecorded agreement, the passage of time, or otherwise, other than taxes that are not yet due and payable.

**2.19 Information and Data Furnished.** To the best of Seller's knowledge, all information and data furnished by Seller to Buyer with respect to the Property are true, correct, complete, and not misleading.

**2.20 Notice of Repairs, Alterations, or Corrections.** No governmental agency has served any notice on Seller regarding, nor does Seller have knowledge of any planned notice requiring, any repairs, alterations, or corrections of any existing condition on the Property.

**2.21 Defects.** To the best of Seller's knowledge, there are no existing structural defects in the buildings and improvements, and any plumbing equipment, heating, ventilation and air conditioning equipment, in the electrical wiring and fixtures, gas distribution (if applicable) and the water and sewage systems presently on or in the Property, and all facilities and equipment relating thereto, are all in good working order and condition.

**2.22 Third Party Agreements.** There are no contracts or agreements in effect with any third party for the management or maintenance of the Property, or with any employees, which cannot be terminated upon thirty (30) days' notice or less, without cost to Buyer. Notwithstanding the foregoing, Seller agrees to provide to the Buyer copies of all contracts in effect with third parties for the provision of management, maintenance, and other services related to the Property.

**2.23 Other Adverse Facts.** To the best of Seller's knowledge without inquiry, Seller knows of no materially adverse fact, affecting or threatening to affect the Property which have not been disclosed to Buyer in writing. Between the date Seller executes this Agreement and Closing, Seller will notify Buyer in writing of any events which occur or any facts of which it becomes aware which would make any of its representations or warranties false or misleading. Except as otherwise permitted by Buyer in writing, in its sole discretion, each of the warranties or representations made in this Agreement by Seller shall be true and correct as of the date of Closing.

### **ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to Seller:

**3.1 Organization.** Buyer is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is qualified to do business therein. Buyer has the requisite power and authority to execute, deliver, and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "*Buyer Ancillary Agreements*") and to consummate the transactions contemplated hereby.

**3.2 Authorization.** The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.3 No Conflicts.** Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

**3.4 Litigation.** There is no action, suit, or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder. Buyer is not operating under or subject to any order, writ, injunction or decree of any court or governmental authority which would have a material adverse effect on the ability of Buyer to enter into this Agreement or consummate the transactions contemplated hereby.

**3.5 Qualification.** Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and FCC Rules. There are no facts that would, under existing law and FCC Rules, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. No waiver of or exemption from any FCC Rule is necessary for the FCC Consent to be obtained. There are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application.

**3.6 Financing.** Buyer has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Purchase Price and any other amounts to be paid by it in accordance with the terms of this Agreement.

## ARTICLE 4: SELLER COVENANTS

**4.1 Covenants.** Between the date of the fully executed Agreement and Closing, except as contemplated, required, or permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed, or conditioned, Seller shall:

(a) operate the Station in the ordinary course of business and in all material respects in accordance with the Communications Act and FCC Rules and with all other applicable laws, regulations, rules, and orders;

(b) not materially adversely modify, and in all material respects, use commercially reasonable efforts to maintain in full force and effect, the FCC Licenses;

(c) not sell, lease, or dispose of or agree to sell, lease, or dispose of any of the Station Assets unless replaced in accordance with the terms of this Agreement;

(d) maintain the Property in the ordinary course of business consistent with past practices and will replace any Tangible Property that becomes worn out, lost, stolen, or destroyed with like property of substantially equivalent kind and value;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) maintain in full force and effect through the Closing Date property damage, liability, and other insurance with respect to the Station Assets consistent with insurance maintained for other stations owned by Seller;

(g) employ commercially reasonable efforts to not cause or permit any timber or other trees, shrubbery, minerals, or other emblements on the Property to be cut, harvested, mined, or otherwise removed from the Property; cause or permit any dumping of trash or refuse of any kind or description upon the Property; and shall not make or enter into or renew any lease or other agreement for the use, occupancy, or possession of all or any part of the Property without the prior written consent of Buyer; and

(h) between the Effective Date and the Closing Date, not cause or permit any timber or other trees, shrubbery, minerals, or other emblements on the Property to be cut, harvested, mined, or otherwise removed from the Property; not cause or permit any dumping of trash or refuse of any kind or description upon the Property; and not make or enter into or renew any lease or other agreement for the use, occupancy, or possession of all or any part of the Property without the prior written consent of Buyer, which shall not be unreasonably withheld.

**4.2 Conveyance.** Seller agrees to convey the real property to Buyer by special warranty deed with modern English covenants of title, free and clear of all encumbrances,

tenancies, and liens (for taxes or otherwise), except as may be provided for in this Agreement, subject to applicable easements and restrictive covenants of record not adversely affecting the use of the Property for any purpose or rendering the title unmarketable. If a defect or non-permitted encumbrance is found that is of such character that it can be cured by legal action within a reasonable time not to exceed sixty (60) days (one hundred-fifty (150) days for environmental defects), Seller will, at Seller's expense, promptly take action as is necessary to cure the defect. If the defect cannot be cured within the applicable amount of time, Buyer shall have the option to terminate this Agreement, extend the time to cure the defect, or waive the defect and proceed to Closing. Seller agrees to deliver possession of the Property to Buyer at closing.

## **ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree as follows:

**5.1 Confidentiality.** Seller and Buyer agree that, subject to the requirements of applicable laws and regulations, including the FCC requirement that the parties file a copy of this Agreement as part of the FCC Application, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including without limitation any financial information) shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement.

**5.2 Announcements.** Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

**5.3 Control.** Buyer shall not, directly or indirectly, control, supervise, or direct the operation of the Station prior to the Closing. Consistent with the Communications Act and FCC Rules, control, supervision and direction of the operation of the Station prior to the Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

**5.4 Risk of Loss.**

(a) Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Closing, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) In the event of any loss of or damage to any of the Station Assets or premises, or any part thereof, prior to the Closing, Seller shall use commercially reasonable efforts to repair, replace, or restore such assets or premises impacted in a timely manner.

(c) If such repair, replacement, or restoration is not completed prior to Closing, the parties shall proceed to Closing (with Seller's representations and warranties deemed modified to take into account any such condition) and Seller shall promptly repair or

replace such item in all material respects after Closing (and Buyer will provide Seller access and any other reasonable assistance requested by Seller with respect to such obligation), except that if such damage or destruction materially disrupts the operations of the Transmission Facilities, Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects, subject to Section 10.1.

(d) If prior to Closing the Station is off the air or operating at a power level that results in a material reduction in coverage (a "**Broadcast Interruption**"), Seller shall use commercially reasonable efforts to return the Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of 24 hours, Buyer may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to Section 10.1. For the avoidance of doubt, an event of loss prior to Closing shall not constitute a breach of this Agreement.

(e) Notwithstanding anything herein to the contrary, if at any time any such condition described in this Section 5.4 exists and the reasonably estimated cost to remedy all such conditions in the aggregate exceeds \$200,000, either party shall have the right to terminate this Agreement upon written notice to the other party.

#### **5.5 Inspections, Investigations, Testing, and Evaluations.**

(a) Seller shall give to Buyer and its designated agents and representatives full access to the Property during normal business hours for a period of sixty (60) calendar days (the "**Study Period**") to conduct, at Buyer's sole risk, cost, and expense, (i) an investigation of the Property, including such tests, examinations, inspections, and other studies of the Assets and Premises as Buyer deems appropriate in its sole discretion, including those related to engineering, water, groundwater, sanitary and storm sewer, utilities and environmental assessments, as well as soil borings, (ii) a review of the Seller's title to the Premises, and (iii) other property inspections and studies as Buyer deems necessary at Buyer's expense. Buyer may extend the Study Period for two additional sixty (60) day periods by providing Seller with written notice to exercise options before the expiration of the then current Study Period.

(b) Buyer shall, at its expense, reasonably restore the Assets and Premises to their condition prior to the Study Period to the extent of any changes made during the Study Period. Seller shall furnish to Buyer during the Study Period all information concerning the Assets and Premises that Buyer may reasonably request and that is in the possession of Seller.

(c) If Buyer is not satisfied for any reason whatsoever, it may provide notice to Seller in writing of its intention not to proceed to Closing under the terms of the Agreement, provided that such notice is received by Seller within three (3) business days after the end of the Study Period. In such event, this Agreement shall automatically be terminated, the Deposit shall be returned to Buyer immediately, and no party shall have any liability hereunder except as expressly provided to the contrary in this Agreement.

(d) Buyer shall indemnify, defend, and hold Seller harmless from and against all costs, expenses, and liabilities incurred by Seller in connection with the investigations, tests, and studies conducted by Buyer and Buyer's entry upon the Premises pursuant to Section 5.5. Notwithstanding anything contained herein to the contrary, Buyer's repair and indemnification obligations under this 5.5(d) shall survive Closing or termination of this Agreement (regardless of the reason for termination) as the case may be.

(e) Nothing in this Agreement shall bar the Commonwealth of Virginia or any agency thereof from enforcing any applicable laws or regulations if contamination by toxic or hazardous substances are discovered on the Premises.

(f) Buyer and its representatives shall have the right to make a further inspection immediately before Closing; provided, however, that Buyer shall not be relieved of its obligation to consummate the transaction if the Assets are in substantially the same condition as at the end of the Study Period.

**5.6 Employees.** Buyer is not obligated to offer post-Closing employment to any employees of the Station.

**5.7 Accounts Receivable.** Buyer shall have no obligation to collect the Accounts Receivable on behalf of Seller.

**5.8 Actions.** After Closing, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action which is pending or threatened against Seller or its affiliates with respect to the Station, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, Buyer shall make available its employees to give depositions or testimony and shall furnish all documentary or other evidence that Seller may reasonably request; provided, however, Seller shall reimburse Buyer for any out-of-pocket costs Buyer incurs in order to comply with this Section 5.8.

## **ARTICLE 6: SELLER CLOSING CONDITIONS**

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

### **6.1 Representations and Covenants.**

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.



**6.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**6.3 FCC Authorization.** The FCC Consent shall have been obtained and the FCC Renewal Application shall have been granted.

**6.4 Deliveries.** Buyer shall have complied with its obligations set forth in Section 8.2.

## **ARTICLE 7: BUYER CLOSING CONDITIONS**

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

### **7.1 Representations and Covenants.**

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

**7.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**7.3 FCC Authorization.** The FCC Consent shall have been obtained and shall have become a Final Order, and the FCC Renewal Application shall have been granted.

**7.4 Deliveries.** Seller shall have complied with its obligations set forth in Section 8.1.

## **ARTICLE 8: CLOSING DELIVERIES**

**8.1 Seller Deliveries.** At Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) a validly executed Special Warranty Deed with English Covenants of Title in recordable form conveying marketable fee simple title to the Property, free and clear of all liens and encumbrances except real property taxes and other applicable *ad valorem* taxes for the current year prorated to date of Closing, and except for Permitted Liens, standard exceptions, and permitted exceptions;

(b) a good standing certificate issued by the Secretary of State of Seller's jurisdiction of formation;

(c) certified copies of resolutions of Seller's board of directors authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(d) the certificate described in Section 7.1(c);

(e) an assignment and assumption of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

(f) a joint notice to the Settlement Agent requesting delivery of the Deposit to Seller;

(g) a bill of sale conveying the other Station Assets from Seller to Buyer; and

(h) executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Station Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens);

(i) any warranties or manuals in Seller's possession affecting any equipment and/or improvements to the Property; and

(j) written confirmation that the repairs identified in Schedule 8.1(j), attached hereto and made a part of this Agreement, have been completed by Seller, at Seller's expense.

**8.2 Buyer Deliveries.** At Closing, Buyer shall deliver or cause to be delivered to Seller:

(a) the Closing Payment and Deposit in accordance with Sections 1.5 and 1.6 hereof;

(b) a good standing certificate issued by the Secretary of State of Buyer's jurisdiction of formation;

(c) certified copies of resolutions of Buyer's board of directors authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(d) the certificate described in Section 6.1(c);

(e) an assignment and assumption of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

(f) a joint notice to the Settlement Agent requesting delivery of the Deposit to Seller; and

(g) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

## ARTICLE 9: SURVIVAL; INDEMNIFICATION

**9.1 Survival.** The representations and warranties in this Agreement shall survive the Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except that if within such twelve (12) month period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. Notwithstanding the forgoing, any representations and warranties in this Agreement which relate to title to the Station Assets (the "***Title Representations***") shall survive until the expiration of any applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

### **9.2 Indemnification.**

(a) Subject to Section 9.2(c), from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("***Damages***") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties made under this Agreement; or
- (ii) any default by Seller of any covenant or agreement made under this Agreement; or
- (iii) the Retained Obligations; or
- (iv) the business or operation of the Station before the Closing, except for the Assumed Obligations.

(b) Subject to Section 9.2(c), from and after Closing, Buyer shall defend, indemnify, and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

- (i) any breach by Buyer of its representations and warranties made under this Agreement; or
- (ii) any default by Buyer of any covenant or agreement made under this Agreement; or
- (iii) the Assumed Obligations; or
- (iv) the business or operation of the Station after the Closing.

(c) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) neither party will have any liability to the other under Section 9.2(a)(i) or Section 9.2(b)(i) (other than the Title Representations) until the indemnified party's aggregate Damages exceed \$50,000, after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of the indemnifying party under Section 9.2(a)(i) (other than the Title Representations) or Section 9.2(b)(i) shall be an amount equal to the fifty percent (50%) of the Purchase Price.

### 9.3 Procedures.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "**Claim**"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim;

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable; and

(v) Following Closing, the right to indemnification, defense, hold harmless, payment or reimbursement provided in this Article 9 will be the exclusive remedy of any Party with respect to Damages in connection with the transactions contemplated by this Agreement.

## **ARTICLE 10: TERMINATION AND REMEDIES**

**10.1 Termination.** Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below); provided, that Buyer may not terminate pursuant to this Section 10.1(b) if it is then in material breach of or default under this Agreement;
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing; provided further, that Seller may not terminate pursuant to this Section 10.1(c) if it is then in material breach of or default under this Agreement;
- (d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date twelve (12) months after the date of this Agreement;
- (e) as provided by Section 5.4(d); or
- (f) as provided by Section 5.5.

**10.2 Cure Period.** Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "**Cure Period**" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and shall continue until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date determined under Section 1.9; provided, that if the breach or default is non-monetary and cannot reasonably be cured within such 20-day period but can be cured before the Closing Date determined under Section 1.9, and if diligent efforts to cure promptly commence, the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date as determined under Section 1.9.

**10.3 Survival.** Except as provided by Section 10.5, the termination of this Agreement shall not relieve either party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.6

(Deposit) (and Section 10.5 with respect to the Deposit), 5.1 (Confidentiality) and 11.1 (Expenses) shall survive any termination of this Agreement.

**10.4 Specific Performance.** In the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. Notwithstanding the foregoing, if prior to Closing the condition described in Section 10.1(c) exists, Seller's sole remedy shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 10.5, except for any failure by Buyer to comply with its obligations related to the Deposit or Sections 1.10, 5.1, 5.2 or 5.3, as to which Seller shall be entitled to all available rights and remedies, including without limitation specific performance. If any action is brought by Buyer against Seller to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and the prevailing Party in litigation shall be entitled to receive from the non-prevailing Party all court costs, attorney's fees and other out-of-pocket expenses incurred by the prevailing Party in enforcing or defending its rights under this provision.

**10.5 Liquidated Damages.** If Seller terminates this Agreement pursuant to Section 10.1(c), the Deposit, but not the interest thereon, shall be delivered to Seller as liquidated damages and such delivery shall constitute Seller's sole remedy under this Agreement. Buyer acknowledges that Seller's recovery of the Deposit is not a penalty and that Seller's liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer's material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

## **ARTICLE 11: MISCELLANEOUS**

**11.1 Expenses.** Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement. The filing fee for the FCC Consent and fees owed to the Settlement Agent shall be divided equally between Buyer and Seller. All other governmental fees and charges applicable to any requests for governmental consents shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). Buyer shall be solely responsible for all governmental taxes, fees, and charges applicable to the transfer of the Station Assets under this Agreement. Seller is responsible for any commission, brokerage fee, advisory fee or other similar payment owed to Broadcast Properties, LLC that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby. Buyer is responsible for any commission, brokerage fee, advisory fee or other similar payment owed to Guest Technology, LLC that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

**11.2 Further Assurances.** Each party shall, at Closing or from time to time after Closing, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may



reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

**11.3 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

**11.4 Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally-recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Seller: Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765  
Attn: Shaine Grieshaber  
Tele: 916-251-1600  
Email: [SGrieshaber@kloveairl.com](mailto:SGrieshaber@kloveairl.com)

with a copy (which shall not constitute notice) to: Wilkinson Barker Knauer, LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036  
Attn.: David D. Oxenford, Esq.  
Tele: (202) 783-4141  
Email: [doxenford@wbklaw.com](mailto:doxenford@wbklaw.com)

If to Buyer: Virginia Tech Foundation, Inc.  
902 Prices Fork Road, Suite 4000  
Blacksburg, VA 24061  
Attn: John E. Dooley, CEO  
Tele: (540) 230-2875  
Email: [jdooley@vtf.org](mailto:jdooley@vtf.org)

with a copy (which shall not constitute notice) to: Virginia Tech Foundation, Inc.  
902 Prices Fork Road, Suite 130  
Blacksburg, VA 24061  
Attn: Catherine Potter  
Tele: (540) 230-2875  
Email: [cpotter@vtf.org](mailto:cpotter@vtf.org)

**11.5 Amendments, Modifications.** No amendments, modifications, or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the parties hereto.

**11.6 Waiver of Provisions.** The terms, covenants, representations, warranties, and conditions of this Agreement may be waived only by a written instrument executed by the party

waiving compliance. The failure of either party at any time or times to require performance of any provision of this Agreement shall not affect the exercise of a party's rights at a later date. No waiver granted in any one circumstance shall be deemed a waiver in any other instance, no matter how similar. No practice of the parties shall, by itself, be deemed a waiver of any right hereunder.

**11.7 Entire Agreement.** This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement between the parties with respect to the Station, which shall remain in full force and effect. Neither party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Seller makes no representation or warranty to Buyer with respect to any projections, budgets or other estimates of the Station's revenues, expenses or results of operations or, except as expressly set forth in Article 2, any other financial or other information made available to Buyer with respect to the Station.

**11.8 Severability.** If any court or governmental authority of competent jurisdiction holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, so long as neither party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**11.9 No Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and assigns.

**11.10 Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to the choice of law provisions thereof. Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the federal or state courts of the State of Delaware. The parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

**11.11 Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and both of which together will constitute one and the same agreement.

**ARTICLE 12:      DEFINITIONS**

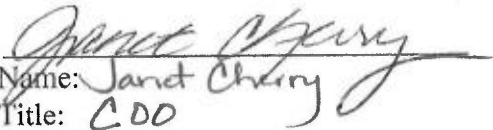
The following is a list of terms used in this Agreement and a reference to the section hereof in which such term is defined:

| <u>Term</u>                 | <u>Section Reference</u> |
|-----------------------------|--------------------------|
| Accounts Receivable         | 1.2(g)                   |
| Assumed Obligations         | 1.4                      |
| Broadcast Interruption      | 5.4(d)                   |
| Buyer                       | Preamble                 |
| Buyer Ancillary Agreements  | 3.1                      |
| Claim                       | 9.3(a)                   |
| Closing                     | 1.9                      |
| Closing Date                | 1.9                      |
| Closing Payment             | 1.5                      |
| Code                        | 1.8                      |
| Communications Act          | 2.4                      |
| Cure Period                 | 10.2                     |
| Damages                     | 9.2(a)                   |
| Deposit                     | 1.6                      |
| Excluded Assets             | 1.2                      |
| FCC                         | Recitals                 |
| FCC Application             | 1.12                     |
| FCC Consent                 | 1.12                     |
| FCC Licenses                | 1.1(a)                   |
| FCC Renewal Application     | 2.4                      |
| FCC Rules                   | 2.4                      |
| Final Order                 | 1.9                      |
| GAAP                        | 1.7                      |
| Permitted Liens             | 1.3                      |
| Premises                    | 1.1(b)                   |
| Property                    | 1.1(b)                   |
| Purchase Price              | 1.5                      |
| Retained Obligations        | 1.4                      |
| Seller                      | Preamble                 |
| Seller Ancillary Agreements | 2.1                      |
| Settlement Agent            | 1.6                      |
| Station                     | Recitals                 |
| Station Assets              | Recitals                 |
| Study Period                | 5.5(a)                   |
| Title Representations       | 9.1                      |
| Transmission Facilities     | 1.1(b)                   |
| Transmitter Site            | 1.1(b)                   |

*[remainder of this page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**EDUCATIONAL MEDIA FOUNDATION**

By:   
Name: Janet Cherry  
Title: COO

**VIRGINIA TECH FOUNDATION, INC.**

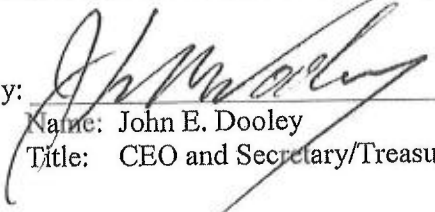
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**EDUCATIONAL MEDIA FOUNDATION**

By: \_\_\_\_\_  
Name:  
Title:

**VIRGINIA TECH FOUNDATION, INC.**

By:   
Name: John E. Dooley  
Title: CEO and Secretary/Treasurer

VTF OFFICE OF  
JCC 9-26-19  
GENERAL COUNSEL  
REVIEWED